

Dear City Council,

From the outset it is noted that regardless of any losses in court, all cases were filed in good faith and had/have merit. I believe that better success will be had in the remaining cases. However, to allow for the fighting to end and for all parties to be able to move into the future with dignity, I propose the following truce offering:

**The offer.**

City of Homestead settles the recently filed civil rights lawsuit, Case No. 19-cv-21986.

The rough settlement terms would be:

1. City pays me, Dr. James Eric McDonough, an amount of **\$177,004.28** for physical injuries, legal costs and attorney fees incurred in relation to Case No. 19-cv-21986.
2. I dismiss and waive all claims from all other pending and anticipated lawsuits.
3. Additionally, all parties (including me, my wife, the City of Homestead and any of its agents, employees, officers, etc.) agree to a global settlement waiving all past and present claims between the two sides.
4. There will be no admission(s) of guilt or fault made by any party or their agents, employees, officers, etc.
5. I will not publish nor have anyone on my behalf publish details about this settlement. Specifically, I will not convey to anyone that this was a victory for me nor a defeat for the city.

If you accept this offer, the finer terms of the contract can be hammered out between our respective attorneys. I am represented by counsel in the newly filed Federal case. However, I have consulted Mr. Greenstein who has given me permission to contact you and have you contact me on this issue, or it can stay between the attorneys. I am open to making other concessions such as not filing any more records requests, no more attending and speaking at council meetings, etc.

**The why this amount?**

Both sides have the will, ability, and mindset to fight every case all the way through to appeals. That would mean we are roughly looking at least another two to three years of litigating multiple cases simultaneously, possibly longer.

The City spent \$158,294.45 litigating against me last fiscal year while litigating three cases and going forward it will be litigating at least four if not more cases.

Assuming, conservatively, two and a half years of litigation at this rate, we get a back of the napkin calculation of the taxpayers being burdened with an additional \$395,736.13 in legal fees as its only cost, and that is only if the City wins every case which is not likely.

I am currently willing to settle for less than half this amount, \$197,868.65 minus the \$20,863.78 the magistrate awarded in fees for Case No. 17-cv-23227, for a total of **\$177,004.28**.

### **Why it is a good business decision.**

Walking away with an automatic 55.3 % reduction in expected minimum cost liability to litigate is always a wise business decision. Whereas, fighting to the end, even while winning, would likely cost more than twice the requested amount.

I know the City is prepared to litigate the recently filed Case No. 19-20986 and may even prevail on some counts. However, this is clearly a case of false arrest and denial of my constitutional rights. There is even video evidence supporting those claims and indicating your officers may have not been completely truthful in their prior testimony and police reports. I am confident we will prevail on a majority of the claims and your lawyers, if they are candid with you, will probably tell you the same thing. A loss in that case could lead to the City paying not only its attorneys but paying for my attorney(s) as well as all costs and any damages awarded. This could lead to the taxpayers being burdened not with just twice its cost of settling now but could easily be four or more times that amount when taking everything into account.

Further, a loss of any case could lead to non-monetary legal consequences for the City and/or its employees. Whereas, the City has spent almost the same amount as requested just to prevent me from obtaining declarations and/or injunctions in one public records case, and now has another records case being litigated asking for declarations and injunctions as well.

Therefore, the City could save considerably on its legal expenses and move forward without any declaration(s) of a violations of speech rights or public records access, in what both City employees and attorneys themselves have said on record is political emergency/hot potato, and not have to worry about the consequences should any of my claims prevail. I will no longer have a reason to continue to file public records request looking for evidence, eliminating the chance of even more records lawsuits than anticipated. And most importantly we can all go our separate ways and leave each other alone in peace, i.e. you leave me alone, I leave you alone.

**Why would I make such an offer.**

While there have been recent setbacks I am not discouraged, I am happy with the legal precedent I have set so far, and I am more than happy to continue fighting for my rights and possibly establishing further precedent(s). However, after seven years of fighting, I think both sides would be better off with some type of reasonable resolution, and if settlement is made I would leave the City alone, so long as me and my family are left alone.

Coincidentally, the amount after payment of attorney's fees would provide me with approximately my out-of-pocket cost to date. Essentially, I would financially basically be breaking even, while still suffering other injuries and loss of time uncompensated, if such fact concerns the council.

**Summary of currently pending cases which Homestead is defending:**

- 1) McDonough v. Homestead et al. – **First Civil Rights** – Case No. 17-CV-23227: The City just won at appeal due to mistakes of my former attorney. Congratulations. However, a

Petition for rehearing/rehearing en banc is being filed. In making this offer, it is assumed that the Petition will not be successful as the statistics are less than 5%.

- a. If the Petition is successful the lawsuit will be back at the beginning of litigation, as if no litigation had occurred, other than the loss of the earlier claims. Admittedly, this is not likely to happen.
  - b. If the petition is not successful, then the issue of attorney's fees remains. I have no qualms with City going after my former attorney, Gary Ostrow, for any of its fees and costs. Additionally, though the magistrate has granted \$20,863.78 to the City it is not certain the court's final order will agree and grant any fees against me. Further, if the City did push for and obtain a final judgment awarding attorney's fees against me, then that would be appealed under the U.S. Supreme Court precedent, *Fox v. Vice* which forbids such fee awards. The City is reminded that in the closed public records case it spent more than it recovered in obtaining its award for cost. Though the civil rights case is not likely to be such a drastic ratio, 5 to 1, as the first public records case was, there is slim to no chance that an appeal on fees would cost less than the fees sought, that is assuming the City even wins the appeal on fees.
- 2) McDonough v. Murguido et al. -**Defamation**- Case No. 15-08342: It seems discovery is near complete and trial may be scheduled sometime soon barring additional motion practice. There is a recording in that case which is damning evidence. Further, I filed this case after Chief Rolle would not let me file a complaint for the same action claiming that Murguido was acting off duty. I was surprised when the City began defending him in this case and am surprised it continues to do so. This was intended to be a lawsuit between he and I and not involve the City of Homestead. What's sad is a simple acknowledgement and apology at nearly any point before the three false arrest and four false stalking injunctions would have prevented or stopped all of this.
  - 3) McDonough v. Stettin et al. – **Second Public Records** – Case No. 17-017515: This case is heading towards summary judgment on June 4, 2019 if not delayed for these settlement negotiations. The cost of the hearing will be substantial. Further, the City faces a strong chance of losing the remaining points at issue, if so it may receive an injunction or declaration against it, and is already liable for my costs of suit. Regardless, of outcome this case is likely going to appeal, and the City has already spent over \$168,000.00 and likely well more than the amount requested so far in this one public records case.
  - 4) McDonough v. Homestead – **Third Public Records** - Case No. 19-06869: This case was recently filed and dismissed after the City provided the records. Your attorneys know that this is not the end, and if the case is not reopened it is going to appeal. Then it will most likely be remanded to the trial court for further proceedings, likely followed by a second appeal. I already have the opening brief near ready to go. To avoid the City having to spend money preparing a response brief at this time, I will wait to file my notice of

appeal and brief until the Judge either rules on my motion for reconsideration or the City refuses this offer.

- 5) McDonough v. Mata et al. – **Second Civil Rights** – Case No. 19-cv-21986: Recently filed. Includes but is not limited to the actions of 1) being removed from the July 2016 council meeting, then chased down and explicitly threatened with violations of my rights on video; 2) being illegally trespassed from city hall property in August 2016 for prior speech on video; 3) then being falsely arrested with police reports that conflict with the video evidence; 4) and finally being falsely arrested again for exercising my rights to speech and press online. These actions are all well-documented with video and public records. While possibly outliers, settlements and awards for only a single false arrest on an honest mistake can far surpass the amount requested, in addition to the City's own legal bill.

<https://www.local10.com/news/bob-norman/jury-awards-man-600000-for-flpd-false-arrest>

<https://www.nbc-2.com/story/36610152/fort-myers-to-pay-nate-allen-440k-for-wrongful-arrest>

<https://www.sun-sentinel.com/news/fl-xpm-2011-09-08-fl-pbso-lawsuit-20110908-story.html>

### **Conclusion.**

Hopefully cooler heads will prevail, and you will make the prudent financial decision and we can put this all behind us and move forward.

Dated 5/22/2019

Sincerely,

/s/ James Eric McDonough  
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